

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18361.4. Probable Cause Proceedings.

(a) Probable Cause Report. If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Government Code Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.

(b) At least 21 days prior to any determination of probable cause, the Enforcement Division staff shall provide the following, by service of process or registered mail with return receipt requested, to all proposed respondents:

(1) A copy of the probable cause report;

(2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;

(3) If the Commission met in executive session on this matter pursuant to 2 Cal. Code of Regulations Section 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of 2 Cal. Code of Regulations Section 18361.2.

(c) Response to Probable Cause Report. Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information.

A proposed respondent who submits a response must file it with the Executive Director and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.

The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 days following the date the response was filed with the Executive Director.

The Executive Director may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the Executive Director may allow additional material to be submitted as part of the initial response or rebuttal.

(d) Probable Cause Conference. Any proposed respondent may request a probable cause conference. The request shall be served upon the Executive Director and all other proposed respondents not later than 21 days after service of the probable cause report unless the Executive Director extends the time for good cause. The Executive Director shall fix a time for the probable cause conference and conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right

to be present and participate. The Executive Director may allow witnesses to attend and participate in part or all of the probable cause conference. In making this determination, the Executive Director shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the Executive Director if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone.

The probable cause conference shall be recorded. The Executive Director may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the Executive Director requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) Finding of Probable Cause. The Executive Director may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the Executive Director does not constitute a finding that a violation has actually occurred.

The Executive Director shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the

material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice.

If the Executive Director makes a finding of probable cause, he or she shall prepare an Accusation pursuant to Government Code Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The Executive Director shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Government Code Section 83116.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

HISTORY

1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
2. Amendment filed 7-18-2007; operative 8-17-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 29).